



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534

May 9, 2008

Mr. Mark Latham
13601 Highway 45 North
Finger, Tennessee 38334

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7006 0810 0000 1061 7474

Subject: DIRECTOR'S ORDER NO. WPC08-0101
L & L SALES, INC.
CHESTER COUNTY, TENNESSEE

Dear Mr. Latham:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section. If the Respondent is a Corporation, Limited Liability Partnership, Limited Liability Company or any other artificial entity created by law, then the Respondent must obtain legal counsel to represent it in this matter.

If you or your attorney has questions concerning this correspondence, contact me at (615) 532-0672.

Sincerely,

Patrick N. Parker
Manager, Enforcement and Compliance Section

PNP: BMF

cc: DWPC – EFO-Jackson
DWPC – Compliance File
OGC

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
L & L SALES, INC.)	
)	
)	
RESPONDENT)	CASE NO. WPC08-0101

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "Division") by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "Department").

II.

L & L Sales, Inc. (hereinafter the "Respondent") is an active corporation licensed to do business in the state of Tennessee and is the owner/developer of property located at Highway 45 and Memory Lane in Chester County (hereinafter the "site"). Service of process may be made on the Respondent through Mark Latham, Registered Agent, at 13601 Highway 45 North, Finger, Tennessee 38334.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 et seq., the Water Quality Control Act, (hereinafter the “Act”) has occurred, or is about to occur, the Commissioner may issue a complaint to the violator, and may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the Commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the State resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the Official Compilation Rules and Regulations of the State of Tennessee, Chapters 1200-4-3 and 1200-4-4 (hereinafter the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the Commissioner may delegate to the Director of the Division of Water Pollution Control any of the powers, duties, and responsibilities of the Commissioner under the Act.

IV.

The Respondent is a “person” as defined at T.C.A. § 69-3-103(20) and, as herein described, has violated the Act.

V.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the Department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the Tennessee Construction General Permit (TNCGP) for storm water discharges associated with construction activity may be obtained by submittal of a Notice of Intent (NOI), a Storm Water Pollution Prevention Plan (SWPPP), and an appropriate fee.

VI.

Sugar Creek, its unnamed tributary, and the adjacent wetland, referred to herein, are “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state are classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, “Use Classifications for Surface Waters,” is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, these waters are classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

FACTS

VII.

On January 18, 2008, division personnel from the Jackson Environmental Field Office (J-EFO) conducted a complaint investigation at the site. Division personnel observed that land disturbance activity in excess of 1 acre had occurred, and that erosion prevention and sediment control (EPSC) measures installed at the site were inadequate,

allowing sediment to collect in a wet weather conveyance that drains to an unnamed tributary to Sugar Creek.

Upon completion of a file review, division personnel determined that the Respondent had not applied for nor received coverage under the TNCGP for the construction activity.

VIII.

Division personnel issued the Respondent a Notice of Violation (NOV) on January 22, 2008, as a result of the violations observed during the aforementioned inspection. In the NOV, the Respondent was cited for failing to obtain permit coverage and was required to immediately stabilize the site and obtain coverage under the TNCGP by submitting a completed NOI, SWPPP, and appropriate fee by February 15, 2008.

IX.

On March 24, 2008, division personnel conducted a follow-up inspection at the site and observed that EPSC measures had not been installed properly and were not retaining sediment on site.

It was also observed that additional land disturbance activity had occurred since the previous inspection, and it was noted that the Respondent had not obtained TNCGP coverage as required in the January 22, 2008 NOV.

Sediment was again noted to have collected in a wet weather conveyance that drains to the unnamed tributary to Sugar Creek. As a result of the inspection, a 2nd NOV was issued for failure to meet the requirements of the initial NOV.

X.

On March 31, 2008, division personnel met with the Respondent on site and discussed the need for professionally designed EPSC measures to be installed to prevent additional sediment loss from the site.

While at the site, division personnel documented that sediment resulting from the Respondent's activities had migrated into an adjacent wetland, resulting in a condition of pollution. It was also observed that additional activity had occurred since the previous visit, and that sediment from this activity had again filled part of the wet weather conveyance that drains to the unnamed tributary to Sugar Creek.

XI.

On April 23, 2008, division personnel conducted a site inspection and observed that sediment had migrated from the site into the wetland and had been deposited in depths of 4 to 6 inches over an area approximately half an acre in size.

It was also observed that sediment from the site had filled the unnamed tributary to Sugar Creek, with deposits 6 inches in depth at some locations. Sediment-laden water from the unnamed tributary was discharging into Sugar Creek creating a sediment plume. It was noted that sediment discharges from the site had resulted in conditions of pollution in the wetland, unnamed tributary, and Sugar Creek. As a result of the April 23, 2008, inspection, a 3rd NOV was issued on the same day.

XII.

During the course of investigating this case, the Division has incurred damages in the amount of TWO HUNDRED AND TWENTY-TWO DOLLARS AND NINETY-NINE CENTS (\$222.99).

VIOLATIONS

XIII.

By performing construction activities without coverage under the TNCGP, and failing to furnish information, the Respondent has violated T.C.A. §§ 69-3-108(a)(b), and 114(b), which state in part:

§ 69-3-108(a) states, in part:

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

§ 69-3-108(b) states, in part:

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

§ 69-3-114(b) states, in part:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

XIV.

By causing a condition of pollution in Sugar Creek, its unnamed tributary, and the adjacent wetland area, the Respondent has violated T.C.A. § 69-3-114(a).

§ 69-3-114(a) states, in part:

It is unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in Section 69-3-103 (22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XV.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. The Respondent shall implement appropriate EPSC measures designed by a professional engineer or landscape architect to assure that no eroded material leaves the site and enters waters of the state. Documentation that EPSC measures have

been implemented is to be sent within 15 days of receipt of this Order to the manager of the Division of Water Pollution Control located at the Jackson Environmental Field Office (J-EFO), located at 1625 Hollywood Drive, Jackson, Tennessee 38305.

2. The Respondent shall maintain appropriate EPSC measures to assure that no additional material leaves the site and enters waters of the state. The EPSC measures shall be maintained until permanent erosion preventive vegetative cover is established.
3. Within 30 days of receipt of this Order the Respondent shall submit a corrective action plan (CAP), designed by a professional engineer or other qualified professional, to restore the affected stream segments and wetland, specifically addressing the removal of sediment and the stabilization of the affected areas. This plan shall, at a minimum, include detailed options for removing the sediment deposits, where appropriate, and a time schedule to identify the proposed activities and the dates required to complete the work. The CAP is to be submitted to the manager of the Division of Water Pollution Control located at the J-EFO at the address listed in Item 1, above.
4. The Respondent shall, within 60 days of written approval of the restoration plan, complete implementation of the plan and send documentation of completion to the manager of the Division of Water Pollution Control located at the J-EFO at the address listed in Item 1, above.

5. The Respondent shall, within 15 days of receipt of this Order, submit to the manager of the Division of Water Pollution Control at the J-EFO a completed NOI to obtain coverage under the TNCGP for the areas of the site affected by unpermitted land disturbance activities. The NOI shall be accompanied by a site-specific SWPPP and the appropriate permit fee. If the division finds the submission incomplete or otherwise unacceptable, the Respondents shall, within 30 days of receipt of such notification, make suggested revisions and modifications as directed by the division and resubmit the corrected NOI and/or SWPPP for review and approval.
6. The Respondent shall, within 6 months of receipt of this Order, provide documentation of attendance and successful completion of the Department's Erosion Prevention and Sediment Control Workshop, for all employees who manage or oversee construction projects. Notification of completion shall be sent to the manager of the Division of Water Pollution Control located at the J-EFO, at the address listed in Item 1, above. Information regarding the workshop can be found online at <http://www.tnepsc.org>.
7. The Respondent is hereby assessed DAMAGES in the amount of TWO HUNDRED AND TWENTY-TWO DOLLARS AND NINETY-NINE CENTS (\$222.99), payable within 30 days of receipt of this Order.
8. The Respondent shall pay a CIVIL PENALTY of FORTY-THREE THOUSAND DOLLARS (\$43,000.00) to the Department, hereby assessed, to be paid as follows:
 - a. The Respondent shall, within 30 days of receipt of this ORDER, pay a

CIVIL PENALTY in the amount of NINE THOUSAND FIVE HUNDRED DOLLARS (\$9,500.00).

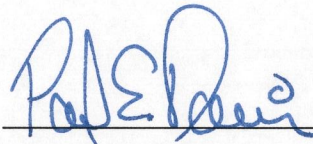
- b. If, and only if, the Respondent fails to comply with item 1 above in a timely manner, the Respondent shall pay SIX THOUSAND FIVE HUNDRED DOLLARS (\$6,500.00) to the Division within 30 days of default.
- c. If, and only if, the Respondent fails to comply with item 2 above in a timely manner, the Respondent shall pay SIX THOUSAND FIVE HUNDRED DOLLARS (\$6,500.00) to the Division within 30 days of default.
- d. If, and only if, the Respondent fails to comply with item 3 above in a timely manner, the Respondent shall pay SIX THOUSAND FIVE HUNDRED DOLLARS (\$6,500.00) to the division within 30 days of default.
- e. If, and only if, the Respondent fails to comply with item 4 above in a timely manner, the Respondent shall pay SIX THOUSAND FIVE HUNDRED DOLLARS (\$6,500.00) to the Division within 30 days of default.
- f. If, and only if, the Respondent fails to comply with item 5 above in a timely manner, the Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the Division within 30 days of default.
- g. If, and only if, the Respondent fails to comply with item 6 above in a timely manner, the Respondent shall pay TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) to the Division within 30 days of default.

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The Director of the Division of Water Pollution Control may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of 30 days in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondent is advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the Director of the Division of Water Pollution Control on this 9th day of May, 2008.



PAUL E. DAVIS, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§69-3-109, 115 allow the Respondent to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file a written petition setting forth each Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within THIRTY (30) DAYS of receiving this Order and Assessment.

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization. It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the state of Tennessee.

At the conclusion of a hearing the Board has the authority to affirm or modify, or deny the Order and Assessment. This includes the authority to modify the penalty within the statutory confines.

Furthermore, in the event the Board finds that the Respondent is responsible for the alleged violations after a hearing, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to: Appeal of an Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor Annex, 401 Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.